



Paper No. 2

MAILED

NOV 04 1997.

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: BOX INTERFERENCE
COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

Filed by: Michael Sofocleous
Telephone: (703) 308-9823
Facsimile: (703) 308-7953

Interference No. 104,046

Kishore

v.

Burrell et al.

INTERLOCUTORY ORDER NO. 1 SETTING TIMES FOR
FILING PRELIMINARY STATEMENTS AND MOTIONS
AND REQUIREMENTS FOR PRELIMINARY MOTIONS

This interference has been assigned to the undersigned Administrative Patent Judge (APJ) in accordance with 37 CFR § 1.610. All future papers filed in this interference should be captioned to include this information. To secure the just, speedy and inexpensive determination of this interference in accordance with 37 CFR § 1.601, the APJ is issuing the following requirements for taking action in this interference.

Questions of Procedure

Any questions regarding procedure in this interference should be directed to the undersigned APJ or to a Program and Resource Administrator. Any telephone communication with the undersigned must normally include the participation of both parties, for example, via a conference call. A telephone communication for the purpose of requesting an extension of the times set need not include the participation of the opposing party as long as the party is informed of the communication.

Interference No. 104,046

Identification of Lead Attorney or Agent

Each party is required to file a paper in accordance with 37 CFR § 1.613 identifying its lead attorney or agent (see 37 CFR § 1.601(k)). Future changes in the lead attorney or agent must likewise be called to the attention of this board as soon as is reasonably possible. No contact should be made with the undersigned by anyone other than the lead attorneys or agents.

Identification of Assignee

The parties' attention is directed to the requirements of 37 CFR § 1.602(b) and (c). 37 CFR § 1.602(b) requires that the parties notify the Board within 20 days after declaration of "any and all right, title and interest in any application or patent involved or relied upon in the interference unless the right, title and interest is set forth in the notice declaring the interference." See 37 CFR § 1.602(c) for any change of any right, title and interest in any application or patent involved or relied upon in the interference.

Note also that under new rules 37 CFR §§ 3.71 and 3.73, when an assignee seeks to appoint an attorney or take other action, such as filing a terminal disclaimer, it is up to the assignee to establish ownership and to submit a statement certifying that title is in the assignee.

Box Interference

There has been confusion regarding the use of the "BOX INTERFERENCE" requirement of 37 CFR § 1.1(e) in the filing of papers. Unless the paper itself is hand carried to the Service Branch of the Board of Patent Appeals and Interferences, located in Room 10C01 of Crystal Gateway 2 (1225 Jefferson Davis Highway, Arlington, VA), the designation "BOX INTERFERENCE" must be on the outside of the envelope containing the paper as well as on the paper itself. Merely hand carrying a paper to the PTO Mail Room does not suffice.

Interference No. 104,046

Explanation of Each Party's Invention

The technical background of the judge assigned to this interference is chemistry. It would be helpful if each party would file a double spaced "paper" of no more than eight (8) pages (including heading and signature block, but not certificate of service) which explains the party's invention in plain English using as technical terms as reasonably possible. Each party is authorized to file, a "response" of no more than five (5) pages (including heading and signature block, but not certificate of service) to an opponent's "paper," again using as few technical terms as reasonably possible. A response should be filed within 15 days after the date of service of the "paper." The "papers" and "responses" should prove useful in further proceedings before the PTO and/or other forums.

Additional Requirements with Respect to Motions under 37 CFR § 1.633(c) and (i)

Each preliminary motion to redefine under 37 CFR § 1.633(c) or (i) must be accompanied by a certificate under 37 CFR § 1.637(b), stating that the moving party has conferred with each opposing party in an effort in good faith to resolve by agreement the issues raised by the motion. If an agreement cannot be reached, the certificate will state that all the reasons and facts in support of the motion were discussed with each opponent, identify the issues and/or facts in dispute and state the reasons why each opposing party disagrees.

Each preliminary motion under 37 CFR § 1.633(c) shall contain an appendix which sets forth proposed count(s) and proposed claims. The proposed counts are to be labeled as follows:

NAME OF THE PARTY IN CAPITAL LETTERS PROPOSED COUNT A, B, etc.

Contingent Motion under 37 CFR § 1.633(i)

In response to a motion under 37 CFR § 1.633(a), (b), or (g), a party may file a motion under 37 CFR § 1.633(i) to

Interference No. 104,046

redefine under 37 CFR § 1.633(c), to substitute a new application under 37 CFR § 1.633(d), or a motion to add a reissue application under 37 CFR § 1.633(h). The party filing the motion under 37 CFR § 1.633(i) must show a nexus between the motion filed under 37 CFR § 1.633(i) and the motion under 37 CFR § 1.633(a), (b), or (g). Cf. Pearson v. Wolfe, 210 USPQ 686 (Comm'r. Pats. 1979).

The filing of a motion under 37 CFR § 1.633(i) does not reopen the motion period to the filing of additional motions under 37 CFR § 1.633(a) to (e) or (g) to (i).

Title and Numbering of Preliminary Motions, etc.

The parties are requested to use titles for preliminary motions, oppositions, and replies, i.e.,

SMITH PRELIMINARY MOTION NO. 1 FOR JUDGMENT....

JONES OPPOSITION NO. 1 TO SMITH PRELIMINARY MOTION....

SMITH REPLY NO. 1 TO JONES OPPOSITION NO. 1....

"Combined" Oppositions and Replies not to be Filed

An opposition shall not contain a motion and shall respond to only a single preliminary motion; so-called "combined" oppositions responding to more than one preliminary motion shall not be filed.

A reply shall be directed only to new points raised in the opposition. See 37 CFR § 1.638(b). A reply shall not contain a motion and shall respond to only a single opposition; so-called "combined" replies to more than one opposition shall not be filed.

Incorporation by Reference

No motion, opposition, or reply may incorporate therein by reference another motion, opposition, or reply.

Interference No. 104,046

Prohibition Against Presenting Duplicate Papers

When presenting a paper in this interference, counsel shall not submit with the paper (as an appendix, exhibit, or otherwise) a copy of a paper previously filed in the interference (37 CFR § 1.618(b)).

Time and Manner of Filing Documentary Exhibits and Affidavits

Documentary exhibits (patents, printed publications, etc.) referred to in preliminary motions, oppositions, or replies should be identified by documentary exhibit numbers (not letters) on a label placed in the lower right-hand corner of the first page of the exhibit. Compare 37 CFR § 1.653(i). If important material is covered by an exhibit label on the first page of the exhibit, a copy of the first page of the exhibit may be reproduced and presented as page 1-a of the exhibit. Documentary exhibits should be labeled as follows:

Documentary Exhibit 1
NAME OF PARTY IN CAPITAL LETTERS
Interference No. ____

Affidavits referred to in preliminary motions, oppositions, or replies should be identified by exhibit numbers (not letters) on a label placed in the lower right-hand corner of the first page of the exhibit. Compare 37 CFR § 1.653(i). Affidavits should be labeled as follows:

Affidavit Exhibit 1
NAME OF PARTY IN CAPITAL LETTERS
Interference No. ____

The documentary exhibits should be bound together in numerical order in one or more spiral bound volumes as necessary. The affidavit exhibits should also be bound together in numerical order in a separate spiral bound volume. Each preliminary motion, opposition, or reply shall refer to a documentary or affidavit exhibit by number; each affidavit shall refer to a documentary exhibit by number. The purpose of this requirement

Interference No. 104,046

is to avoid the filing of multiple copies of the same documentary or affidavit exhibit merely because the exhibit is referred to in more than one preliminary motion, opposition, or reply.

A documentary or affidavit exhibit mentioned in preliminary motions, oppositions, or replies shall be served (but not filed) with the preliminary motion, opposition, or reply in which the exhibit is first mentioned, and all documentary and affidavit exhibits mentioned in preliminary motions, oppositions, or replies shall be filed in the PTO on the date that replies to oppositions to motions are due.

Clean Copy of Each Party's Claims, Proposed Claims and Proposed Counts

Each party is required to file a copy of its claims designated in the notice declaring this interference as corresponding to the count, a copy of each claim proposed to be added to this interference, and a copy of each count proposed in any preliminary motion filed by the party. The required copy must be filed on the date that replies to oppositions to motions are due. The copy can be incorporated in a separate volume or in the volume containing the documentary exhibits.

Paper Size

All papers (e.g., identification of lead counsel, notifications, requests, motions, oppositions, etc.) filed in this interference shall be on 8-1/2 inch x 11 inch paper (with the possible exception of original exhibits); papers of a different size, including legal size papers, shall not be filed; all papers shall be punched at the top with two-1/4 inch holes spaced 2-3/4 inches apart.

SETTLEMENT

The parties are strongly encouraged to make contact with each other at the time that they identify their respective lead attorneys or agents in an attempt to settle this interference. The APJ can be expected to cooperate in allowing reasonable time

Interference No. 104,046

for a bona fide attempt at settlement negotiations, which will obviate the necessity for filing preliminary motions and will result in the filing of an appropriate termination paper under 37 CFR § 1.662.

Setting of Times for Taking Action in this Interference

1. For identifying lead attorney or agent to close 18 NOV 1997.
2. For filing explanations to close 18 DEC 1997.
3. For filing preliminary statements to close 04 FEB 1998 18 FEB 1998.
4. For serving preliminary statements to close _____.
5. For filing preliminary motions under 37 CFR § 1.633(a) to (g) to close 04 APR 1998.
6. For filing preliminary motions under 37 CFR § 1.633(i) or (j) to close 24 APR 1998.
7. For filing oppositions to preliminary motions filed under 37 CFR § 1.633 to close 14 MAY 1998.
8. For filing replies to oppositions to preliminary motions to close 29 MAY 1998.



MICHAEL SOFOLEOUS
Administrative Patent Judge
Telephone: (703) 308-9823
Facsimile: (703) 308-7952

MS:clm

Interference No. 104,046

Attorney for Burrell et al.:

Joseph T. Eisele
711 Third Ave.
New York, NY 10017

Attorney for Kishore:

Grace L. Bonner
MONSANTO COMPANY - BB4 F
700 Chesterfield Parkway North
St. Louis, MO 63198

PARTY	Kishore, G.	APPLICATION NO.	08/120,703	FILING DATE	9/13/93	PATENT NO., IF ANY	ISSUE DATE, IF ANY
If application has been patented, have maintenance fees been paid?				Yes	No	Maintenance fees not due yet	
Accorded the benefit of:		COUNTRY	APPLICATION NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY	
		U.S.	07/709,663	6/7/91		MAILED	
		U.S.	07/539,763	6/18/90		NOV 04 1997	
The claim(s) of this party which correspond(s) to this count is(are): PATENTED OR PATENTABLE PENDING CLAIMS <u>2,4-6,8,10,12-15,21,22,28,30-32,36,38-42,44-55</u>							
UNPATENTABLE PENDING CLAIMS PAT. & T.M. OFFICE BOARD OF PATENT APPEALS AND INTERFERENCES NONE							

PARTY	Kishore et al.	APPLICATION NO.	08/016,881	FILING DATE	2/11/93	PATENT NO., IF ANY	ISSUE DATE, IF ANY
If application has been patented, have maintenance fees been paid?				Yes	No	Maintenance fees not due yet	
Accorded the benefit of:		COUNTRY	APPLICATION NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY	
		U.S.	07/1735,065	7/24/91	5,345,123	9/20/94	
		U.S.	07/731,226	7/16/91			
		U.S.	07/638,383	12/21/90			
The claim(s) of this party which correspond(s) to this count is(are): PATENTED OR PATENTABLE PENDING CLAIMS <u>54-58</u>							
UNPATENTABLE PENDING CLAIMS NONE							
The claim(s) of this party which does(does not) correspond to this count is(are): PATENTED OR PATENTABLE PENDING CLAIMS <u>NONE</u>							
UNPATENTABLE PENDING CLAIMS NONE							

Instructions

- For every patent involved in the interference, check if the maintenance fees have been paid by using the patent number with PALM screen 2970. If fees are due and they have not been paid, the interference cannot be declared since it would involve an expired patent (35 USC 135(a); 37 CFR 1.606)
- For each party, identify the patentable (or patented) and unpatentable (pending) claims which correspond to the count (37 CFR 1.601(f), (n); 1.609(b)(2)).
- For each party, identify the patentable (or patented) and unpatentable (pending) claims which do not correspond to the count (37 CFR 1.609(b)(3)).
- Forward all files including those the benefit of which is being accorded.
- Keep a copy of the Interference Initial Memorandum and any attachments for your records.

All information requested below must be attached on (a) separate typewritten sheet(s).

- On a separate sheet, set forth a single proposed interference count. If any claim of any party is exactly the same word for word as this count, please indicate the party, application or patent number, and the claim number.
- For each claim designated as corresponding to the count, provide an explanation of why each claim defines the same patentable invention as the count (37 CFR 1.609(b)(2)).
- For each claim designated as not corresponding to the count, provide an explanation of why each claim defines a separate patentable invention from the count (37 CFR 1.609(b)(3)).
- For each additional count, if any, repeat steps 2-6 and, additionally, provide an explanation why each count represents a separate patentable invention from every other count (37 CFR 1.609(b)(1)).

DATE 9/4/97

PRIMARY EXAMINER (Signature)

David J. Fox

TELEPHONE NO.

308-0280

ART UNIT

1003

DATE

GROUP DIRECTOR SIGNATURE (if required)

**The application number and filing date of each application the benefit of which is intended to be accorded must be listed. It is not sufficient to merely list the earliest application if there are intervening applications necessary for continuity.

THIS PAGE CAN BE DUPLICATED IF THERE ARE MORE THAN TWO INTERFERING PARTIES

Page ____ of ____

NOV. 7, 1997 9:16AM JKANE DALSIMERCE INITIAL MEMORANDUM
 BOARD OF PATENT APPEALS AND INTERFERENCES: An interference is found to exist between the following cases:
 This interference involves 3 parties.

PARTY	APPLICATION NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY
Burrell et al	08/289,199	8/2/94		
If application has been patented, have maintenance fees been paid? Yes No Maintenance fees not due yet				
**Accorded the benefit of:				
COUNTRY	APPLICATION NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY
U.S.	07/991,451	12/16/92	5,387,756	2/7/95
U.S.	07/628,216	12/17/90		
Great Britain	89 28937.5	12/21/89		
Great Britain	90 14988.1	7/6/90		
The claim(s) of this party which correspond(s) to this count is(are):				
PATENTED OR PATENTABLE PENDING CLAIMS 2-4,7-8,13-16,20-21,34,43		UNPATENTABLE PENDING CLAIMS NONE		
The claim(s) of this party which does/do not correspond to this count is(are):				
PATENTED OR PATENTABLE PENDING CLAIMS 31,39		UNPATENTABLE PENDING CLAIMS NONE		
PARTY	APPLICATION NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY
If application has been patented, have maintenance fees been paid? Yes No Maintenance fees not due yet				
Accorded the benefit of:				
COUNTRY	APPLICATION NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY
The claim(s) of this party which correspond(s) to this count is(are):				
PATENTED OR PATENTABLE PENDING CLAIMS		UNPATENTABLE PENDING CLAIMS		
The claim(s) of this party which does/do not correspond to this count is(are):				
PATENTED OR PATENTABLE PENDING CLAIMS		UNPATENTABLE PENDING CLAIMS		

Instructions

- For every patent involved in the interference, check if the maintenance fees have been paid by using the patent number with PALM screen 2970. If fees are due and they have not been paid, the interference cannot be declared since it would involve an expired patent (35 USC 135(a); 37 CFR 1.606).
- For each party, identify the patentable (or patented) and unpatentable (pending) claims which correspond to the count (37 CFR 1.601(f), (n); 1.609(b)(2)).
- For each party, identify the patentable (or patented) and unpatentable (pending) claims which do not correspond to the count (37 CFR 1.609(b)(3)).
- Forward all files including those the benefit of which is being accorded.
- Keep a copy of the Interference Initial Memorandum and any attachments for your records.

All information requested below must be attached on (a) separate typewritten sheet(s).

- On a separate sheet, set forth a single proposed interference count. If any claim of any party is exactly the same word for word as this count, please indicate the party, application or patent number, and the claim number.
- For each claim designated as corresponding to the count, provide an explanation of why each claim defines the same patentable invention as the count (37 CFR 1.609(b)(2)).
- For each claim designated as not corresponding to the count, provide an explanation of why each claim defines a separate patentable invention from the count (37 CFR 1.609(b)(3)).
- For each additional count, if any, repeat steps 2-6 and, additionally, provide an explanation why each count represents a separate patentable invention from every other count (37 CFR 1.609(b)(1)).

DATE 9/4/97

PRIMARY EXAMINER (Signature)

David J. Fox

TELEPHONE NO.
308-0280

ART UNIT
1803

DATE

GROUP DIRECTOR SIGNATURE (if required)

**The application number and filing date of each application the benefit of which is intended to be accorded must be listed. It is not sufficient to merely list the ea application if there are intervening applications necessary for continuity.

THIS PAGE CAN BE DUPLICATED IF THERE ARE MORE THAN TWO INTERFERING PARTIES

Page ___ of ___

Attachment to PTO-850:

Item 6: Proposed interference count:

Claim 2 of Kishore (08/120,703) corresponds exactly to the proposed interference count.

Item 7: Explanation for claims corresponding to the proposed count:

Claims 2, 4-6, 8, 10, 12-15, 21-22, 28, 30-32, 36, 38-42 and 44-55 of Kishore (application Serial No. 08/120,703) correspond to the proposed interference count since they are either drawn to the same method of the count, or are drawn to the DNA sequence used in that method, or to plant cells and plants produced by that method; wherein that method would have been an obvious use of that DNA sequence, and wherein the plant cells and plants would have been obvious products of that method.

Claims 54-58 of Stalker et al (application Serial No. 08/016,881) correspond to the proposed interference count since they are drawn to the same DNA sequence used in the method of the count, wherein that method would have been an obvious use of the DNA sequence.

Claims 2-4, 7-8, 13-16, 20-21, 34 and 43 of Burrell et al (application Serial No. 08/284,199) correspond to the proposed interference count since it would have been obvious to one of ordinary skill in the art to utilize the method for transforming a plant with DNA encoding a plastid transit peptide and adenosine diphosphoglucose pyrophosphorylase (ADPGPPP*i*) for modified starch production of the count, to obtain the method for transforming a

plant with DNA encoding ADPGPPi for modified starch production of claims 2-4, 7-8 and 34 of Burrell et al, and to obtain the resultant transformed plants containing the gene of claims 13-16, 20-21 and 43 of Burrell et al. The use of the transit peptide would have been an obvious variation to one of ordinary skill in the art, given the knowledge of those of ordinary skill in the art that starch synthesis occurs in the plastid.

Item 6: Explanation for claims not corresponding to the count:

Claims 31 and 39 of Burrell et al (08/284,199) do not correspond to the count because claim 31 is drawn to a method involving a different structural gene encoding a different enzyme, phosphofructokinase, not involved in the count; and claim 39 is drawn to a plant transformed with the divergent structural gene not involved in the count.

DAVID T. FOX
PRIMARY EXAMINER
GROUP 180



INTERFERENCE—INITIAL MEMORANDUM

EXAMINERS INSTRUCTIONS—This form need not be typewritten. Complete the items below and forward to the Group Clerk with all files including those benefit of which has been accorded. The parties need not be listed in any specific order. Use a separate form for each count.

(See MPEP 1120)

BOARD OF PATENT APPEALS AND INTERFERENCES: An interference is found to exist between the following cases:

This is count 1 of 1 count(s)

1. NAME	SERIAL NO.	FILING DATE	PATENT NO., IF ANY
Kishore, G.	08/120,703	09-13-93	
The claims of this party which correspond to this count are: (2) 4-6, 8, 10, 12-15, 21, 22, 28, 30-32, 36, 38-42 & 44-55 (all allowable).			
The claims of this party which do not correspond to this count are: NONE			
* Accorded benefit of: COUNTRY	SERIAL NO.	FILING DATE	PATENT NO., IF ANY
U.S.	07/707,663	06/07/91	
U.S.	07/539,763	06/18/90	
2. NAME	SERIAL NO.	FILING DATE	PATENT NO., IF ANY
Stalker, et al.	08/016,881	02-11-93	
The claims of this party which correspond to this count are: 54-58. (all allowable)			
The claims of this party which do not correspond to this count are: NONE			
* Accorded benefit of: COUNTRY	SERIAL NO.	FILING DATE	PATENT NO., IF ANY
U.S.	07/735,065	07/24/91	5,349,123
U.S.	07/632,383	12/21/90	
U.S.	07/731,226	7/16/91	
3. NAME	SERIAL NO.	FILING DATE	PATENT NO., IF ANY
The claims of this party which correspond to this count are: The claims of this party which do not correspond to this count are:			
* Accorded benefit of: COUNTRY	SERIAL NO.	FILING DATE	PATENT NO., IF ANY

If a claim of any party is exactly the same as this count, it should be circled above. If not, type the count in this space (attach additional sheet if necessary):

See attachment

* The serial number and filing date of each application the benefit of which is intended to be accorded must be listed. It is not sufficient to merely list the earliest application if there are intervening applications necessary for continuity.

DATE 6/19/95	PRIMARY EXAMINER David T. Fox	TELEPHONE NO. 308-0280	ART UNIT 1803
Clark's Instructions: 1. Obtain a title report for all cases and include a copy. 2. Forward all file including those benefit of which is being accorded.		GROUP DIRECTOR SIGNATURE (if required) <i>John Dell</i>	

Count of 104046

2. (Twice Amended) A method of producing genetically transformed plants which have elevated starch content, comprising the steps of:

- (a) inserting into the genome of a plant cell a recombinant, double-stranded DNA molecule comprising
- (i) a promoter which functions in plants to cause the production of an RNA sequence in the target plant tissues,
 - (ii) a structural DNA sequence that causes the production of an RNA sequence which encodes a fusion polypeptide comprising an amino-terminal plastid transit peptide and a [deregulated] foreign ADPglucose pyrophosphorylase enzyme,
 - (iii) a 3' non-translated DNA sequence which functions in plant cells to cause transcriptional termination and the addition of polyadenylated nucleotides to the 3' end of the RNA sequence;
- (b) obtaining transformed plant cells; and
- (c) regenerating from the transformed plant cells genetically transformed plants which have an elevated starch content.
- 4/1
Completed!*



Paper No. 19

MAILED

NOV 04 1997

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: BOX INTERFERENCE
COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

Filed by: Michael Sofocleous
Telephone: (703) 308-9823
Facsimile: (703) 308-7953

Applicants: Burrell et al.

Serial No.: 08/284,199

Filed: 08/02/94

For: MODIFICATION OF PLANT

METABOLISM

Accorded Benefit of: U.S. Serial Nos. 07/991,451, filed 12/16/92, now Patent No. 5,387,756, issued 02/07/95; and 07/628,216, filed 12/17/90, now abandoned; and Great Britain patent applications 8928937.5, filed 12/21/89 and 90 14988.1, filed 07/06/90

This case referred to above has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interference with other cases hereafter specified. Attention is directed to the fact that this interference is declared pursuant to 37 CFR § 1.601 et seq., effective February 11, 1985 (49 Fed. Reg. 48,416 (1984); 1050 Off. Gaz. Pat. & Trademark Office 385 (Jan. 29, 1985)), and amendments effective April 21, 1995. See Notice of Final Rule, 60 Fed. Reg. 14,488 (1995), reprinted in 1173 Off. Gaz. Pat. & Trademark Office 36 (Apr. 11, 1995). A clean copy of the interference rules, as amended, appears at 1173 Off. Gaz. Pat. & Trademark Office 384 (Apr. 18, 1995). The interference is designated as No. 104,046.

By direction of the Commissioner of Patents and Trademarks and as required by 35 U.S.C. § 135(c), notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference."

Serial No. 08/284,199

The cases involved in this interference are:

Junior Party

Applicant: Ganesh M. Kishore

Address: 15354 Grantley Dr., Chesterfield, MO 63017

Serial No.: 08/120,703, filed 09/13/93

For: INCREASED STARCH CONTENT IN PLANTS

Assignee: None

Attorneys of Record: Dennis R. Hoerner, Jr., Thomas P. McBride,
Howard C. Stanley and James C. Bolding

Associate Attorney: Grace L. Bonner

Accorded Benefit of: U.S. Serial Nos. 07/709,663, filed
06/07/91 and 07/539,763, filed 06/18/90,
now abandoned

Address: Grace L. Bonner
MONSANTO COMPANY - BB4 F
700 Chesterfield Parkway North
St. Louis, MO 63198

Senior Party

Applicants: Michael M. Burrell and Keith S. Blundy

Addresses: c/o Advanced Technologies (Cambridge) Limited,
Cambridge Science Park; Cambridge, England
(Respectively)

Serial No.: 08/284,199, filed 08/02/94

For: MODIFICATION OF PLANT METABOLISM

Serial No. 08/284,199

Assignee: Advanced Technologies (Cambridge) Limited, Cambridge
Science Park; Cambridge, England

Attorneys of Record: David S. Kane, Daniel H. Kane,
Joseph C. Sullivan, John Kurucz,
Charles P. Bauer, Gerald Levy,
Joseph T. Eisele, Ronald R. Santucci,
Patrick J. Birde and Tiberiu Weisz

Associate Attorney: None

Accorded Benefit of: U.S. Serial Nos. 07/991,451, filed
12/16/92, now Patent No. 5,387,756, issued
02/07/95 and 07/628,216, filed 12/17/90,
now abandoned; and Great Britain patent
applications 8928937.5, filed 12/21/89 and
90 14988.1, filed 07/06/90

Address: Joseph T. Eisele
711 Third Ave.
New York, NY 10017

Count 1

A method of producing genetically transformed plants
which have elevated starch content, comprising the steps of:

(a) inserting into the genome of a plant cell a
recombinant, double-stranded DNA molecule comprising

(i) a promoter which functions in plants
to cause the production of an RNA
sequence in the target plant tissues,

(ii) a structural DNA sequence that causes
the production of an RNA sequence
which encodes a fusion polypeptide
comprising an amino-terminal plastid
transit peptide and a foreign ADP
glucose pyrophosphorylase enzyme,

Serial No. 08/284,199

(iii) a 3' non-translated DNA sequence which functions in plant cells to cause transcriptional termination and the addition of polyadenylated nucleotides to the 3' end of the RNA sequence;

(b) obtaining transformed plant cells; and

(c) regenerating from the transformed plant cells genetically transformed plants which have an elevated starch content.

The claims of the parties which correspond to this count are:

Burrell et al.: Claims 2-4, 7, 8, 13-16, 20, 21, 34 and 43

Kishore: Claims 2, 4-6, 8, 10, 12-15, 21, 22, 28, 30-32, 36, 38-42 and 44-55


MICHAEL SOFOCLEOUS
Administrative Patent Judge
Telephone: (703) 308-9823
Facsimile: (703) 308-7952

MS:clm

Serial No. 08/284,199

Attorney for Burrell et al.:

Joseph T. Eisele
711 Third Ave.
New York, NY 10017

Attorney for Kishore:

Grace L. Bonner
MONSANTO COMPANY - BB4 F
700 Chesterfield Parkway North
St. Louis, MO 63198



Paper No. 19

MAILED

NOV 04 1997

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: BOX INTERFERENCE
COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

Filed by: Michael Sofocleous
Telephone: (703) 308-9823
Facsimile: (703) 308-7953

Applicants: Burrell et al.
Serial No.: 08/284,199
Filed: 08/02/94
For: MODIFICATION OF PLANT
METABOLISM
Accorded Benefit of: U.S. Serial
Nos. 07/991,451, filed 12/16/92,
now Patent No. 5,387,756, issued
02/07/95; and 07/628,216, filed
12/17/90, now abandoned; and
Great Britain patent applica-
tions 8928937.5, filed 12/21/89
and 90 14988.1, filed 07/06/90

This case referred to above has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interference with other cases hereafter specified. Attention is directed to the fact that this interference is declared pursuant to 37 CFR § 1.601 et seq., effective February 11, 1985 (49 Fed. Reg. 48,416 (1984); 1050 Off. Gaz. Pat. & Trademark Office 385 (Jan. 29, 1985)), and amendments effective April 21, 1995. See Notice of Final Rule, 60 Fed. Reg. 14,488 (1995), reprinted in 1173 Off. Gaz. Pat. & Trademark Office 36 (Apr. 11, 1995). A clean copy of the interference rules, as amended, appears at 1173 Off. Gaz. Pat. & Trademark Office 384 (Apr. 18, 1995). The interference is designated as No. 104,046.

By direction of the Commissioner of Patents and Trademarks and as required by 35 U.S.C. § 135(c), notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference."

Serial No. 08/284,199

The cases involved in this interference are:

Junior Party

Applicant: Ganesh M. Kishore

Address: 15354 Grantley Dr.; Chesterfield, MO 63017

Serial No.: 08/120,703, filed 09/13/93

For: INCREASED STARCH CONTENT IN PLANTS

Assignee: None

Attorneys of Record: Dennis R. Hoerner, Jr., Thomas P. McBride,
Howard C. Stanley and James C. Bolding

Associate Attorney: Grace L. Bonner

Accorded Benefit of: U.S. Serial Nos. 07/709,663, filed
06/07/91 and 07/539,763, filed 06/18/90,
now abandoned

Address: Grace L. Bonner
MONSANTO COMPANY - BB4 F
700 Chesterfield Parkway North
St. Louis, MO 63198

Senior Party

Applicants: Michael M. Burrell and Keith S. Blundy

Addresses: c/o Advanced Technologies (Cambridge) Limited,
Cambridge Science Park; Cambridge, England
(Respectively)

Serial No.: 08/284,199, filed 08/02/94

For: MODIFICATION OF PLANT METABOLISM

Serial No. 08/284,199

Assignee: Advanced Technologies (Cambridge) Limited, Cambridge Science Park; Cambridge, England

Attorneys of Record: David S. Kane, Daniel H. Kane,
Joseph C. Sullivan, John Kurucz,
Charles P. Bauer, Gerald Levy,
Joseph T. Eisele, Ronald R. Santucci,
Patrick J. Birde and Tiberiu Weisz

Associate Attorney: None

Accorded Benefit of: U.S. Serial Nos. 07/991,451, filed 12/16/92, now Patent No. 5,387,756, issued 02/07/95 and 07/628,216, filed 12/17/90, now abandoned; and Great Britain patent applications 8928937.5, filed 12/21/89 and 90 14988.1, filed 07/06/90

Address: Joseph T. Eisele
711 Third Ave.
New York, NY 10017

Count 1

A method of producing genetically transformed plants which have elevated starch content, comprising the steps of:

(a) inserting into the genome of a plant cell a recombinant, double-stranded DNA molecule comprising

(i) a promoter which functions in plants to cause the production of an RNA sequence in the target plant tissues,

(ii) a structural DNA sequence that causes the production of an RNA sequence which encodes a fusion polypeptide comprising an amino-terminal plastid transit peptide and a foreign ADP glucose pyrophosphorylase enzyme,

- (iii) a 3' non-translated DNA sequence which functions in plant cells to cause transcriptional termination and the addition of polyadenylated nucleotides to the 3' end of the RNA sequence;
- (b) obtaining transformed plant cells; and
- (c) regenerating from the transformed plant cells genetically transformed plants which have an elevated starch content.

The claims of the parties which correspond to this count are:

Burrell et al.: Claims 2-4, 7, 8, 13-16, 20, 21, 34 and 43

Kishore: Claims 2, 4-6, 8, 10, 12-15, 21, 22, 28, 30-32, 36, 38-42 and 44-55



MICHAEL SOFOCLEOUS
Administrative Patent Judge
Telephone: (703) 308-9823
Facsimile: (703) 308-7952

MS:clm

Serial No. 08/284,199

Attorney for Burrell et al.:

Joseph T. Eisele
711 Third Ave.
New York, NY 10017

Attorney for Kishore:

Grace L. Bonner
MONSANTO COMPANY - BB4 F
700 Chesterfield Parkway North
St. Louis, MO 63198